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HONORABLE VERNON A. WILLIAMS, SECRETARY
SURFACE TRANSPORTATION BOARD
1925 K Street, N.W. Suite 700
Washington, D.C. 20423-0001

Re: **Finance Docket No. 34606**

Forty Plus Foundation / Manhattan Central Railway
Systems, LLC, - Feeder Railroad Development Application
- Portion of the Consolidated Rail Corporation's West 30TH
Street Secondary Track in New York, NY [ie: Highline]

Dear Secretary Williams;

Enclosed for filing in the above-captioned proceeding is an
original and ten (10) copies of FORTY PLUS FOUNDATION /
MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC, [MCRS];

FEEDER RAILROAD DEVELOPMENT APPLICATION

for filing with the Board in the above referenced matter.

Please be advised that our \$2,600.00 filing fee will be directed
to your attention under separate cover and would be appreciated
if it would be appropriately credited to this application upon
receipt. Kindly acknowledge receipt by date stamping the
enclosed duplicate copy of this letter and returning it in the self
addressed, stamped envelope provided.

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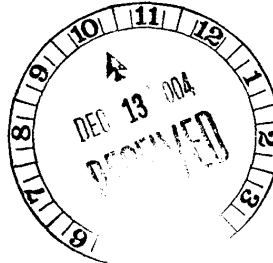
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TRN/jm

Enclosures

cc: All Parties of Record

Respectfully submitted,
Yomislav R. Neuman
Executive Director
FORTY PLUS FOUNDATION &
MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC



December 10, 2004

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BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

FINANCE DOCKET NO. 34606

FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC

TO FILE
-- FEEDER RAILROAD DEVELOPMENT APPLICATION --

PORTION OF THE CONSOLIDATED RAIL CORPORATION'S WEST 30TH STREET
SECONDARY TRACK IN NEW YORK, NY "HIGHLINE"

FORTY PLUS FOUNDATION &
MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC
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Executive Director
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OAKHURST, NJ 07755
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Dated: December 10, 2004

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

FINANCE DOCKET NO. 34606

FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC
TO FILE
– FEEDER RAILROAD DEVELOPMENT APPLICATION –
PORTION OF THE CONSOLIDATED RAIL CORPORATION'S WEST 30TH STREET
SECONDARY TRACK IN NEW YORK, NY "HIGHLINE"

Comes now the **FORTY PLUS FOUNDATION / MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC** ("MCRS" or "APPLICANT") and files this **FEEDER RAILROAD DEVELOPMENT PROGRAM ("FEEDER LINE") APPLICATION** pursuant to **49 U.S.C. Section 10907 (2000)** and **49 C.F.R. Part 1151 (2002)**, which has been designed to encourage and enable shippers and communities to acquire marginal rail lines that are likely to be abandoned or are receiving inadequate rail service. **On behalf of the public convenience and necessity**, this **FEEDER LINE** proceeding involves the line of railroad known as the **West 30th Street Secondary Track** ¹ ("**Highline**") currently owned by **CONSOLIDATED RAIL CORPORATION (CONRAIL)** and **CSX CORPORATION** and **CSX TRANSPORTATION, INC.** (collectively "**CSX**") (**CSX** and **CONRAIL** are collectively referred to as "**RAILROADS**"), located in the borough of Manhattan, New York City, extending (initially below grade) at approximately **milepost 9.35** near West 37th Street between Eleventh and Tenth Avenues, gradually ascends to street level at approximately milepost

9.75 near West 33rd Street and Eleventh Avenue and subsequently becomes an elevated railroad trestle where the **Highline** viaduct now ascends to a minimum clearance of 14 feet over most of the remaining length, continuing south (downtown) at 30th Street & 10th Avenue running along its elevated viaduct "easement" with varying widths of 30' to 80 feet and a track height of approximately 30 feet – presently terminating at approximately 1.6-mile in length at **milepost 10.47** at the northern boundary of Gansevoort Street. In consideration of its application, **MCRS** offers to grant **RAILROADS** access to the portion of the track north of milepost 9.40 to provide service to national shippers at competitive rates to be determined. In support of its application **MCRS** shows the following.

¹ Part of the former New York Central (later Penn Central) freight line **Highline**. The line was acquired by Conrail in 1976 as part of the conveyance of the properties of the bankrupt railroads in the northeast and Midwest under the Regional Rail Reorganization Act, 45 U.S.C. 701 et seq. (3R Act) – an approximate 1.6-mile rail line originating today from a deep cut at approximately **milepost 9.35** near West 37th Street between Eleventh and Tenth Avenues, where it veers south-westerly away from **AMTRAK's** service line... the upstate **New York Empire** (AMTRAK runs down the West Side and into Penn Station). The **Highline**, continues south, then gradually ascends to street level at approximately milepost 9.75 near West 33rd Street and Eleventh Avenue and subsequently becomes an elevated railroad trestle that, in order to accommodate all trains emerging from beneath street level it must make a 0.48 mile long "¾" [west-south-easterly] great loop around the outer perimeter of the Long Island Rail Road's John D. Caemmerer West 30th Street Rail Yards - in order to eliminate any potential street level crossings. Once emerged, the **Highline** viaduct now ascends to a minimum clearance of 14 feet over most of the remaining length, continuing south at 30th Street & 10th Avenue. The **Highline**, is generally situated just west of Tenth Avenue as it proceeds in a somewhat "meandering" compartment between and through buildings, continuing downtown (south) running along its elevated viaduct "easement" with varying widths of 30' to 80 feet and a track height of approximately 30 feet – presently terminating at approximately **milepost 10.47** at the northern boundary of Gansevoort Street, intersecting at Washington St. near the West Side Highway [Rt. 9A] in the popularly referred to 'Meat Packing District' in the Borough of Manhattan, NY. The **Highline** is elevated on a steel and concrete viaduct that was constructed in 1930. Conrail operated over the **Highline** pursuant to easements negotiated over a 40 year planning period from 1885 thru 1925, with the original owners of the properties underlying the **Highline** for the purpose of shipping and receiving rail freight thought the west side of Manhattan Island on a grade separated right-of-way to replace the original 1849 perilous street-level tracks laid along 10th and 11th Avenues.

IDENTIFICATION OF APPLICANT AND LINE AT ISSUE

(1) IDENTIFICATION OF THE LINE TO BE PURCHASED INCLUDING:

(i) The name of the owning carrier –

The line to be purchased is currently owned by CONSOLIDATED RAIL CORPORATION (CONRAIL) and CSX CORPORATION and CSX TRANSPORTATION, INC. (collectively "CSX") (CSX and CONRAIL are collectively referred to as "RAILROADS"). WHEREAS, NEW YORK CENTRAL LINES LLC (NYCLLC) is the title-holder to the elevated railway viaduct with highway-railroad grade separations structures and street-level railway improvements known collectively as the "**Highline**" or the "*West 30th Street Secondary Track*" in New York City, NY, extending from 75-95 Gansevoort Street and running northerly (and westerly) through 547-55 West 34th Street and West 34th Street streetbed, identified as Line Coder 4225 in the records of the United States Railway Association (the "**Highline**"), connecting to the national rail system via the AMTRAK service line the upstate NEW YORK EMPIRE, at milepost 9.35 near West 37th Street between Tenth & Eleventh Avenues. built within and upon certain easements held by NYCLLC's predecessors-in-title held in accordance with (i) agreements relating to the Easements (collectively, the "1929 Agreements") and (ii) those further easement agreements relating solely to individual properties encumbered by the easements, said **Highline** having been conveyed to NYCLLC's immediate predecessor-in-interest CONRAIL by deed recorded December 15, 1978 from Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of PENN CENTRAL TRANSPORTATION COMPANY, Debtor, as grantor, and CONRAIL, as grantee, recorded in the Office of the City Register, New York county (the "Official Records") in Reel 463, Page 1563-A (the **Highline** being identified in Reel 463, Page 1567), and thereafter conveyed (to the extent not previously abandoned and subsequently conveyed to ROCKROSE CONSTRUCTION (KELLY) CORP. by Assignment and Assumption Regarding Easements dated as of November 25, 1990, and recorded in the Official Records in Reel 1747, Page 1584) by CONRAIL to NYCLLC by deed dated as of June 1, 1999,

and recorded in the Official Records on March 1, 2000, in Reel 3067 Page 1110. WHEAREAS, NYCLLC is a single-member limited liability company, of which the single member is "CRC"; CRC is a wholly-owned subsidiary of CONRAIL; and CONRAIL is owned in part by NORFOLK SOUTHERN CORPORATION ("NS") and in part by CSXC.

WHEAREAS, CSXT is a wholly-owned subsidiary of CSXC, and is also the Operator of the *Highline* under that certain Operating Agreement dated as of June 1, 1999, by and between NYCLLC as Owner and CSXT as Operator (the "Operating Agreement").

- (ii) **The history and exact location of the line, including milepost designations, origin and termination points, stations located on the line, and cities, counties and States traversed by the line –**

Originally part of the former NEW YORK CENTRAL (later PENN CENTRAL) freight line, The line [*"Highline"*] was acquired by CONRAIL in 1976 as part of the conveyance of the properties of the bankrupt railroads in the northeast and Midwest under the REGIONAL RAIL REORGANIZATION ACT, 45 U.S.C. 701 et seq. (3R Act) -- an approximate 1.6-mile rail line originating today from a deep cut at approximately **milepost 9.35** near West 37th Street between Eleventh and Tenth Avenues, where it veers south-westerly away from AMTRAK's service line -- the upstate NEW YORK EMPIRE (AMTRAK runs down the West Side and into Penn Station). The *Highline*, continues south, then gradually ascends to street level at approximately milepost 9.75 near West 33rd Street and Eleventh Avenue and subsequently becomes an elevated railroad trestle that, in order to accommodate all trains emerging from beneath street level it must make a 0.48 mile long "¾" [west-south-easterly] great loop around the outer perimeter of the Long Island Rail Road's *John D. Caemmerer* West 30th Street Rail Yards - in order to eliminate any potential street level crossings. Once emerged, the *Highline* viaduct now ascends to a minimum clearance of 14 feet over most of the remaining length, continuing south at 30th Street & 10th Avenue. The *Highline*, is generally situated just west of Tenth Avenue as it proceeds in a somewhat "meandering" comportment between and through buildings, continuing downtown (south) running along it's

elevated viaduct "easement" with varying widths of 30' to 80 feet and a track height of approximately 30 feet -- presently terminating at approximately **milepost 10.47** at the northern boundary of Gansevoort Street, intersecting at Washington St. near the West Side Highway [Rt. 9A] in the popularly referred to '*Meat Packing District*' in the Borough of Manhattan, NY. The **Highline** is elevated on a steel and concrete viaduct that was constructed in 1930. **Conrail** operated over the **Highline** pursuant to easements negotiated over a 40 year planning period from 1885 thru 1925, with the original owners of the properties underlying the **Highline** for the purpose of shipping and receiving rail freight thought the west side of Manhattan Island on a grade separated right-of-way to replace the original 1849 perilous street-level tracks laid along 10th and 11th Avenues.

It is imperative that THE BOARD be made aware that the present deficiency of rail service on the **Highline** is not from the lack of interest from potential shippers, but can be summarized by a combination of events -- primarily the aggressive growth of the national highway systems and resulting assertive advent of the motor carrier/trucking industry in the 1970's -- negatively impacting an overconfident and *unsuspecting* established rail industry, resulting in massive bankruptcies within the railroads of the Northeast and Midwest that have led to a series of essential emergency measures such as the formation of **CONRAIL**, designed to save the rail industry from extinction.

While these upheavals in the rail industry were taking place, in spite of the industry wide losses, the **Highline** continued to operate profitably until it had to abruptly curtail operations in the 1980's as a "temporary" alteration to have its connection to the national rail system "*re-routed*" as a courtesy to NY State and City, to accommodate the construction of the JACOB JAVITS CONVENTION CENTER. This selfless gesture on the part of CONRAIL unfortunately irreparably forced the **Highline's** shippers to commit to other industries for their shipping needs and in some cases dramatically forced to leave the City in order to survive. Subsequently, due to

circumstances beyond the control of both CONRAIL and the *Highline's* shippers -- primarily the unanticipated and arguably premeditated delays on the part of both the State and Convention Center's management to fulfill their contractual obligations and properly reconnect the *Highline* to the national rail system -- which to this day has yet to be implemented. The Line has been the unwitting victim of these anomalous circumstances resulting in the current turmoil, accurately described as "*state of limbo*" by CSX management.

Fortunately the rail industry has recently successfully reinvented itself and is rebounding dramatically, as testament to the recent CSX and NORFOLK SOUTHERN's acquisition of CONRAIL, to work in concert with all other shipping industries utilizing state of the art intermodal and multi-modal technology. In hindsight, CONRAIL's efforts to revitalize the *Highline* under the ICC authority over two decades ago for continued rail services would most definitely have resulted in an unprecedented economic windfall for NYC that can now only be regretted as a monumental and tragic lost opportunity for all parties concerned.

THE BOARD has a statutory duty to preserve and promote continued rail service and to provide the public with a degree of protection against unnecessary discontinuance, cessation, interruption or obstruction of rail service, See e.g., Western Stock Show Association, supra, 2 S.T.B. at 131; Salt Lake, supra, slip op. at 6. Although impediments to State and local government projects are entitled to some weight, agency precedent clearly states that those interests are subordinate to its statutory duty to preserve and promote continued rail service where a carrier (APPLICANT) has expressed a desire to continue or establish operations and has taken reasonable steps to acquire traffic. Chelsea Property Owners -- Aban. -- The Consol. R. Corp. supra. 8 I.C.C. 2d 773, 778-9 (1992).

THE BOARD, has been continually petitioned by the RAILROADS to intervene on their behalf; the RAILROADS have clearly outlined their [RAILROADS] position;

"Consolidated Rail Corporation ("Conrail") takes no position on this novel legal issue, other than to encourage the Board to decide the issue as soon as reasonably possible"

Conrail/CSX/CSXT - Aug 26, 2003 Brief to the Board

This continued insistence by the **RAILROADS** places THE BOARD in the enviable position to correct this wearisome state of affairs immediately on behalf of the public convenience and necessity under the feeder line statute 49 U.S.C. 10907 (c)(1) and satisfy the demands of both local and national shippers that would willingly commit to the only environmentally sensitive direct rail link in and out of Manhattan.

(2) **IDENTIFICATION OF APPLICANT INCLUDING:**

(i) **The applicant's name and address:**

FORTY PLUS FOUNDATION²
MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC³
7 Monmouth Road,
Suite 1
Oakhurst, NJ 07755

(ii) **The name, address and phone number of the representative to receive correspondence concerning this application;**

All correspondence, pleadings, etc., directed to Applicant in this matter should be sent to:

Mr. Tomislav R. Neuman, *Executive Director*
FORTY PLUS FOUNDATION/MCRS
7 Monmouth Road
Suite 1
Oakhurst, NJ 07755
Phone: (732) 222-4327
Cell #: (908) 489-8778
Facsimile: (732) 222-4758
Email: tomislavneuman@aol.com

- (2) **"FORTY PLUS" [40+] established in NYC in 1939, is a 501(c)(3) charitable organization and remains America's oldest and most effective not for profit out-placement employment support organization. 40+ has diligently expanded its successful NYC program into 21 major US Cities over the past 65+ years, designed to provide gainful employment opportunities and successfully lobbied both State and Federal legislative agencies to eliminate age, gender and race related discrimination. 40+ efforts have resulted in laudable recognition from numerous US Presidents, Governors, local officials and community organizations that have acknowledged 40+'s vital contributions within their respective constituencies over the past 7 decades, resulting in the successful placement of over 100,000 members – earning 40+ the enviable distinction of placing 100% of its membership.**
- (3) The FORTY PLUS FOUNDATION has developed a for-profit company titled the "MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC" that has subsequently entered into several strategic alliances and co-ventures with partners possessing professional expertise in design, construction, management and maintenance of the *HIGHLINE* property and it's intermodal equipment as a profitable Class III Shortline Railroad.

(iii) **A description of applicants affiliation with any railroad;**

MCRS as a *Class III Shortline railroad* is affiliated with the renown and highly respected; **MORRISTOWN & ERIE RAILWAY INC. ("M&E")**. The **MORRISTOWN & ERIE RAILWAY INC.** management maintains an impeccable reputation as one of the foremost authorities on Shortlines in the Northeast/NYC marketplace and is uniquely qualified to participate in this co-operative with APPLICANT. **M&E** management is an acknowledged authority on the successful rehabilitation and reactivation of marginal, underused and likely to be abandoned and/or receiving inadequate rail service Shortlines.

The **M&E** operates four lines in Morris County, NJ, all connected by trackage rights over NJ Transit. Freight is interchanged with **NORFOLK SOUTHERN** at Lake Junction, and carried to customers over a 158-mile system of tracks. **MORRISTOWN & ERIE RAILWAY INC.** operates over the same right of way that the first trains used over one hundred years ago. Service has always been the cornerstone of the operation for M&E. Originally built in 1895, to service adjacent paper mill freight and passenger service the M&E is one of the few remaining continually operating railroads in the country due to M&E's managements flexibility and versatility to address this marketplace, it has successfully survived the dramatic slow times of the 1970's in the railroad industry as a whole.

On November 1, 2003 the **MORRISTOWN & ERIE RAILWAY** established operations in the State of Maine as the "**MAINE EASTERN RAILROAD**". The **MAINE EASTERN** operates over the former **MAINE CENTRAL RR Rockland Branch**, which runs from Brunswick to Rockland, ME, and the former **MAINE CENTRAL RR Lower Road**, which runs from Brunswick to Augusta, ME. The major customer on the line is **DRAGON CEMENT**, New England's only cement manufacturer. **DRAGON** ships their products to Canada by rail. Additionally, a portside terminal located in

Rockland provides a route for marine shipment of cement and aggregates to locations in southern New England and the East Coast. The MORRISTOWN & ERIE has initiated a marketing plan to develop additional freight business along these lines and will be exploring several opportunities for passenger train operations including local commuter service and summer excursion trains to the "Down East" tourist destinations which the lines serve.

In light of M&E's outstanding safety record and its history of providing service customized to the user's needs. On December 17, 1995, the MORRISTOWN & ERIE'S BAYSHORE TERMINAL COMPANY started to provide TOSCO'S (NOW CONOCOPHILLIPS) BAYWAY REFINERY with contract switching services with both tailored contracts and service commitments to both CONOCOPHILLIPS' and EXXON CHEMICALS (the other major tenant/user, now known as INFINEUM) needs and service requirements. The result is that CONOCOPHILLIPS and INFINEUM have been able to realize significant cost savings compared to their past switching arrangement. They have also been able to better utilize the resources available to them, and confident in the knowledge that M&E maintains their high safety standards.

In addition to M&E's standard freight and passenger service, MORRISTOWN & ERIE RAILWAY has a very successful *full service* private railcar parking facility "**HANOVER PARK**" located on the MORRISTOWN & ERIE RAILWAY in Whippany, New Jersey.

HANOVER PARK is located on the grounds of the WHIPPANY RAILROAD MUSEUM in a beautiful suburban setting. A 19th century fieldstone depot, classic railway equipment collection and historic structures create a period atmosphere. The MORRISTOWN & ERIE RAILWAY has been the choice of numerous motion picture production companies, to provide rail equipment for both vintage and modern scenes.

M&E management possesses the professional expertise and first hand awareness of both the NYC market, the *HIGHLINE* and all relevant intermodal and multimodal technology and rail

connections – this symbiotic relationship is a superlative collaboration of management, marketing, community involvement and technology. **Morristown & Erie Railway Inc.**, as a local enterprise is particularly sensitive to the local community needs and intends to provide **MCRS** with support and guidance to both grow and prosper, as **APPLICANT** provides New York City with an efficient expanded and vital rail freight link to the North American rail system maintaining and improving the **HIGHLINE**'s connection to the National Rail System.

In light of present day, post 9/11 concerns over security and the escalating expense of fuel dramatically increasing cost to shippers -- plus the growing environmental damage contributed by the trucking industry, **Morristown & Erie Railway Inc.** and **MCRS** will be offering shipper's and travelers one more secure, cost efficient and environmentally sensitive competitive shipping amenity. Concerning the critical development of rail freight service in NYC a senior representative from NYC ECONOMIC DEVELOPMENT CORPORATION recently stated;

"Growing a business in New York City requires local knowledge and understanding of local business needs.... A smaller railroad with this kind of expertise should be able to fully market the [facility] for rail services,"

This collaboration with M&E management's unique qualifications as an authority within this local, regional and national marketplace in addition, M&E's sensitivity to historic preservation, attention to detail, quality, safety and security will insure a successful, profitable and environmentally sound rehabilitation of the **Highline's** original design and purpose to service the City of New York as no other proposals can.

And

- (iv) **If the applicant is a corporation, the names and addresses of its officers and directors:**

The officers and directors of **MCRS** are as follows:

Tomislav R. Neuman	Director: President
Leonard Blacovitch	Director: Treasurer
James McEnroe	Director: Secretary

MAILING ADDRESS:

FORTY PLUS FOUNDATION/MCRS

7 Monmouth Road

Suite 1

Oakhurst, NJ 07755

Phone: (732) 222-4327

Facsimile: (732) 222-4758

Email: tomislavneuman@aol.com

FINANCIAL INFORMATION ABOUT THE APPLICANT

- (1) **INFORMATION SUFFICIENT TO DEMONSTRATE THAT THE APPLICANT IS A FINANCIALLY RESPONSIBLE PERSON. IN THIS REGARD, THE APPLICANT MUST DEMONSTRATE ITS ABILITY:**

- (i) **To pay the higher of the net liquidation value (NLV) or going concern value (GCV) of the line: and**
- (ii) **To cover expenses associated with providing services over the line (including, but not limited to, operating costs, rents, and taxes) for at least the first 3 years after acquisition of the line.**

(i) Pursuant to our New York City community's fervent determination to save and preserve the *HIGHLINE*, MCRS has diligently and painstakingly assembled a credible team over the past decade, which can satisfactorily meet the costs of acquiring and operating the Line. As the *RAILROADS* have recently acknowledged to THE BOARD, the *HIGHLINE* has NO net liquidation value (NLV) and obviously would have no GCV -- essentially it has a negative cash valuation, and therefore the interest in the Line that APPLICANT proposes to acquire would be for the NLV.

In light of this fact, past negotiations and the *RAILROADS'* Aug 26, 2003 Brief to THE BOARD, clearly outlines the railroads position;

"Consolidated Rail Corporation ("Conrail") takes no position on this novel legal issue, other than to encourage the Board to decide the issue as soon as reasonably possible"

the *RAILROADS* have continually insisted that THE BOARD decide the outcome of the Line ASAP. BOARD policy encourages feeder line applications and in recent decisions THE BOARD encouraged APPLICANT to;

"pursue[ing] efforts directed at restoring service over the Highline."

In addition the **RAILROADS** have directed APPLICANT to deal directly with THE BOARD regarding APPLICANT'S interests in the restoration of service over the *Highline*.

- (ii) To cover expenses associated with providing services over the line (including, but not limited to, operating costs, rents, and taxes) for at least the first 3 years after acquisition of the line.

The **RAILROADS** have expressed a willingness to donate the line to a receptive **501(c)(3)** charitable organization, in which the **RAILROADS** would not only be the beneficiary of an extraordinary tax benefit, based on the estimated \$1 Billion replacement valuation (CONRAIL estimates) that would translate into an incomparable windfall for the **RAILROADS** shareholders (essentially this benefit is not available within any other offering presently before THE BOARD), plus, the **RAILROADS** would donate a minimum of **\$7 Million** to the **501(c)(3)** charitable organization as further consideration to assure the potential elimination of future liability and assist the buyer in meeting taxes and maintenance responsibilities.

As a significant consequence of **MCRS'** Application and reactivation of rail services, this "usage" would automatically eliminate the attendant inherent liability that the **RAILROADS** have legitimately agonized over since it acquired the *Highline*. It is important to note that other than active rail service, problematic liability would have naturally accompanied any demolition or alternative CITU applications of the Line.

Both CSX and Conrail during negotiations with APPLICANT (prior to the CONRAIL acquisition) have acknowledged that APPLICANTS "Class III, Short Line Rail carrier" proposal could be implemented as the only offering (since rail service ended in 1980) that would realistically preserve rail freight service on the *Highline* [National Historic Preservation Act (16 U.S.C. § 470 *et seq.*)] and rail employment on this line that would otherwise be abandoned, plus the APPLICANTS proposal fully complies with the original rail freight designation of the Line – which also meets the demand for public convenience and necessity.

Unlike any other offerings currently under consideration, APPLICANTS proposal is in compliance with OSHA standards concerning environmental impacts on safety, transportation systems, land use, energy, air quality, noise, vibration, biological resources, water resources, socio-economic impact, *etc.* directly related to any physical changes in the environment, environmental justice and historic/cultural resources [Clean Air and Water Acts (42 U.S.C. § 7401-7642 and 33 U.S.C § 1344)].

The granting of this application will provide unprecedented customer and community “friendly” on-demand rail freight and passenger transit services by eliminating traditional motor carrier/trucking/surface transportation and rail freight environmental hazards, reducing vehicular accidents effecting pedestrians and property just as the *Highline* was initially designed to function, plus reduce pollutants (including vibration & noise) [pertinent hazardous substance laws (42 U.S.C. § 6901-6933 and § 9601-9675)]. In addition the connection to the National rail system will be maintained and actively utilized.

The technology⁴ to be implemented within APPLICANT’S proposal has been custom designed and stringently tested to meet **Class I track condition** requirements and address local conditions unique to the Chelsea/Clinton West Manhattan environmental mitigation, addressing all present safety concern in accordance with STB environmental rules (49 CFR § 1500) and the PRESIDENT’S COUNCIL ON ENVIRONMENTAL QUALITY REGULATIONS (40 CFR *et seq.*), and other Federal environmental requirements.

⁴ Applicant has entered into a Joint Venture agreement with “ROBOTIC RAILWAY SYSTEMS” (“RPS”) who had begun testing (Class I track condition) designs and equipment for intermodal freight applications on the Highline, over the past several years, initially in both their parent companies test labs in Letonia, Ohio and manufacturing faculties in Clearwater, Fla. As of October 2002, a fully functioning \$6.2 million *beta test* site has been operational in Hoboken, NJ, closely emulating a “mini” Highline corridor environment. The automated freight handling system is now open to the public 24/7 and has performed well over 200,000+ handling transactions over the past 26 months. To underscore the designs reliability, this user friendly “self service” on demand system’s advanced design seamlessly maintained uninterrupted full operational capability during last years Aug. 14th catastrophic blackout that disrupted electrical power in 8 states (including NYC and Hoboken NJ) and Canada.

In addition to the obvious economic feasibility and viability for the private sector to economically support the project and reinvest 100% of FORTY PLUS' profits back into the community -- responding to both the President's mandate for the private sector to help in creating jobs and our own Governor and Mayor who endorse the Presidents initiative.

The APPLICANTS' proposal like none other will continually create much needed employment opportunities in this economy -- APPLICANTS proposal is designed to support and expand the employment generation mission of FORTY PLUS', the legendary and internationally renowned charitable service institution.

Upon THE BOARD granting MCRS' application, no party will be prejudiced by the reactivation of the *Highline*, no public project or alternate use for the right of way is being impeded by the proposed operation of rail service on the Highline. the *HIGHLINE* would now not be demolished (or permanently eviscerated as a result of a proposed CITU), but placed back into productive rail service -- there would be no demolition/alternative usage liabilities.

APPLICANT is sensitive to the concerns of CSX and intends to make every effort to cooperate in order to assure a mutually beneficial and seamless transfer of ownership of the Line for the purpose of the reactivation of rail services.

Presently this Line is being plagued by misguided efforts, if allowed to succeed, would result in the complete adulteration of the original purpose of the Line which raises serious questions whether the Trails Act can be interpreted as permitting a railroad to collude with a potential "trail operator" to circumvent the purposes for which THE BOARD permits the continuation of active rail services. It is regrettable in this case that allows efforts such as the aforementioned to futilely affect the RAILROADS and the public at large to essential become mollified into a false sense of belief that the *Highline* may not be reactivated or profitable(?). Considering that we are discussing New York City -- universally identified as the **richest consumer market in the world**, with 80 million people living within a 24 hour drive of

America's most lucrative commercial market with the *Highline* the only dedicated freight line specifically designed to service Manhattan!

Simple logic would dictate that with any awareness of the obvious overwhelming volume of goods originating or terminating in Manhattan daily, it should be outrageous for the BOARD to accept that sufficient profitability could not be generated on this Line within this #1 market.

Countless rail lines across the country in much smaller traffic areas have made the transition from being money losers and abandonment candidates for their previous Class I owners, to being viable small business for their new Class III owners. In the process, many thousands of miles of rail lines have been preserved and rail jobs have been saved.

Traffic kept on the rails benefits the entire rail system, including the Class I's which almost always participate in moving the freight that the small railroads originate or terminate. This phenomenon, which has seen Class III's proliferate and prosper over the past two decades, has yielded multiple winners – small railroads, large railroads, shippers, local communities and rail employees have all reaped the benefits.

The unfortunate and somewhat bewildered belief that the *Highline* may no longer be viable for rail service or profitability has been perpetrated in part due to the incessant legal wrangling and special interests, that have and continue to plague this valuable resource even prior to CONRAIL's valiant efforts to convince the then presiding authority, the ICC, that the Line did in fact have an economically viable future. When the STB's predecessor regrettably approved the conditional abandonment presently governing the Line, the public, the adjacent property owners and prospective commercial rail/shipper interest were placated into believing that the *Highline's* demise was imminent simply due to the constant legal challenges that have added to the alienation of genuine commercial interests and vitality, plus, the passage of time with essential no apparent efforts to resurrect any commercially viable design to support the Line. Additionally, the fact that this is the oldest case within THE BOARDS jurisdiction, speaks volumes as to the ICC's shortsighted

failure to recognize the value that this Line continued to maintain within the New York City market and the fervent desire on the part of the NY community to save and rehabilitate this Line..

Since the STB's July, 2003 public hearing in NYC, when *Chairman Nober* directed all parties to submit a brief on the matter of whether THE BOARD may issue a certificate of interim trail use under 40 CFR 1121.29 in an adverse abandonment proceeding -- there have since been many developments affecting the *Highline* which bear on it's immediate future. Presently a "*perfect storm*" of events has now transpired where virtually all parties for the first time are now in universal agreement that the *Highline should not* be demolished, but **preserved**. During the July '03 public hearing in NYC, representatives for the RAILROADS clearly stated in reference to the reactivation of the Line;

"if the abandonment were not approved, the railroads would begin to examine possible uses for rail transportation on the Highline."

In particular, the RAILROADS mentioned;

"...using the line to haul waste out of Manhattan and other potential uses may emerge in the future."

As THE BOARD is aware, one indisputable fact remains -- a trail use application has never been granted in any adverse abandonment proceeding, or specifically to a Line that in point-of-fact is not real property but an elevated easement passing through buildings and more importantly when a legitimate application to reactivate/continue rail service is before THE BOARD.

Arrogantly attempting to adulterate the *Highline*, into anything other than an astutely designed rail transportation conduit would be akin to draining the adjacent Hudson River for use as a feral piazza -- both are valuable transportation resources that have not only had historic and current dramatically constructive social, cultural, economic and environmental impacts that transcend this geographic region but contributed on a global scale for centuries and equally have not outgrown their natural and man-made designs.

THE BOARD'S responsibility is for the preservation of rail lines for the purposes of transportation use that is in the public interest. Congress has determined that preserving the line for future transportation use – as opposed to abandonment – **On behalf of the public convenience and necessity** is in the public interest. See *Preseault*, 494 U.S. at 6; cf. 49 C.F.R. § 1152.29(b)(1)(ii). Accordingly, the policy considerations underlying adverse abandonment and the FEEDER LINE Application are compatible. Indeed, because the railroad in an adverse abandonment proceeding is opposed to abandonment and instead wishes to keep a line within the Board's plenary jurisdiction for possible future transportation use, **FEEDER LINE** is absolutely consistent with an adverse abandonment proceeding more so that any reckless CITU at best could ever aspire too.

It would be unprecedented to allow a CITU in this case, since they are all conditional on the future reactivation of rail services in order to qualify and in this instance with immediate full reactivation of service as the alternative would most assuredly not be on behalf of the public convenience and necessity.

As THE BOARD has been informed in previous filings, It is common knowledge that the current CITU proposal being advanced in this case involves plans to “develop” the **Highline** in a manner inconsistent with its return to rail use by deliberately demolishing the **Highline** over the HUDSON YARDS without any intention of providing an alternative right-of-way. The State agencies participating have gone to trivial lengths to convolute several highly suspect unworkable and exorbitant “*Rube Goldberg-ish*” re-connection schemes in a supercilious attempt to convince THE BOARD to justify a CITUS’ indefensible intentions to sever the **Highline** from the national rail system -- resulting in an abandonment of the entire line and removal of the **Highline** from THE BOARD’S jurisdiction. The State and City’s interests for the segment of the **Highline** over the HUDSON YARDS have become much more firm and clearer.

Second, the plans of the City itself to develop the **Highline** south of 30th Street have now become public and demonstrate that the City’s proposed use is again inconsistent with the Trails

Act as it will render the resumption of rail service on the **Highline** south of 30th Street all but impossible. Recent public presentations illustrate the City's plans to "*peel up*" the deck above 23rd Street to create a bizarre informal outdoor amphitheater and a section of the deck would be;

"cut away to create stunning view of cars streaming by below, the opening to be framed by a perfectly manicured lawn...." "Further to the north, a public swimming pool would be embedded into the deck's concrete surface.... A large concrete panel lifts up at one end of the pool to support a faux urban beach. Concrete piers extend out into the water like giant fingers."

Furthermore, the latest City and State co-sponsored advertising campaign promoting the development of an Olympic/Jets stadium over the HUDSON YARDS, has illustrated an edifice with the **Highline** removed. During our direct discussions with members of the Cities 2012 OLYMPIC solicitation team, have clearly stated that the "*Highline must go*" -- for no other reason than it simply "*does not fit into the architect's aesthetic vision for a new Stadium*". When asked if it could possibly co-exist within the 2012 committee's plans, was an emphatic "*no*" and referred to as "*the tail that wags the dog*".

It is important for THE BOARD to note that the **Highline** circumnavigates around the proposed construction site and obviously does not interfere in any form with the "foot print" of any development over the HUDSON YARDS, whether it be a Stadium, expansion of the JAVITS CONVENTION CENTER or residential and office development. The benefits that the **Highline** as an active rail line could offer to any one of the above development scenarios would be a priceless amenity and complement all development. Initially, all construction would benefit immeasurably with an "*on site*" rail delivery line... once construction was completed, the **Highline** would be instrumental in providing unprecedented state of the art on demand mass transit services to support new and existing development -- that has been a obsessive demand of the surrounding community for decades -- the Line would provide superlative amenities and effectively be flawlessly blended into it's surroundings and as the **Highline** today -- "*hide[s] in plain sight*".

The unfortunate limited view that has been pervasive concerning the reactivation of rail services on the *Highline* have shortchanged and curtailed both the viability of intelligent development and the immeasurable economic and environmental benefits both to the City and the resulting *geometric* appreciation of adjacent property valuations brought on by a healthy reactivated *Highline*. In addition, it is inconceivable that a CITU could successfully compete with the current ongoing development of a Multi-Billion dollar Hudson Riverfront public park directly adjacent to the *Highline* – which public park, APPLICANT's active rail line would be instrumental in providing mass transit services for the multitudes wishing to visit for health, relaxation, recreation and take advantage of the unrestricted user friendly and beautifully landscaped Hudson River Park offering concert and amphitheater venues for the public's enjoyment along with unparalleled and unencumbered vistas of the Hudson River. As all evidence suggests, the City and the State agencies *naively* plan to abuse the *Highline* in a manner inconsistent with the Trails Act placing the entire Line in jeopardy of certain devastation.

In light of APPLICANT offering the only viable reactivation proposal, New York City would be the dramatic beneficiary of the APPLICANT's proposal. Obviously any threat of demolition will be averted resulting in no taxpayer funded demolition, or expensive traffic disruptions and environmental hazards, caused by the removal of the *Highline*, or in the event of a CITU the even greater massive financial burden required on the part of the City taxpayers to guarantee the Line from falling into disrepair and abandonment plus assume all attendant liability that the RAILROADS have demanded to be relieved of.

It has been argued that any "park" design with its palpably restrictive access... that it would be significantly more cost efficient to charter the Concord and provide jet transportation to the limited number of beneficiaries of a CITU directly to Paris to visit the actual *Promenade Plantée* the proposed CITU profess' to mimic.

The irreplaceable *Highline* has been accurately described for **over 150 years** as the "*Life line of New York*" effectively serving, feeding and protecting NYC and Americas interest in both boom times and throughout tragic periods such as our Civil War thru to Vietnam. Now, after September 11th, NYC and America need all the support and assistance we can get to help in the massive rebuilding efforts that is now underway. NYC is fortunate that this unique "*Life Line*" is in place at no additional cost to the taxpayer on an miraculous grade separated right-of-way to replace the original 1849 perilous street-level tracks laid along 10th and 11th Avenues notoriously christen "*Death Avenue*". NYC will immediately benefit from APPLICANT'S Class I track condition intermodal freight technology in order to continue the *Highline's* mandate as the "*Life line of New York*"

This APPLICANT will incorporate the only effective technology that can accommodate multiple industry's receiving and dispatching of heavy equipment, machinery, construction materials and supplies on virtually a 24/7 schedule that is not dependent on the traditional capital and labor intensive (plus time and access restrictive) methods of transporting material and machinery to construction sites terminating throughout Manhattan. The Line is ideally suited and situated to transport all forms of vital material(s) to convenient major Manhattan East/West transportation corridor access, all located adjacent to the major North/South Route 9A (West Side Express Highway). The Line will now provide a secure and uninterrupted, labor and capital efficient freight transportation link that would greatly alleviate current massive traffic congestion, quality of life compromising air and noise pollution as a result of the ever growing traffic demands created by the accelerated burden on all bridges, tunnels and surface street thoroughfares into Manhattan.

As THE BOARD is well aware, **FORTY PLUS** is a nationally renown **501(c)(3)** credible and qualifying tax-exempt charitable organization and is willing to accept the line as a donation or outright purchase. APPLICANT'S proposal is the only Offeror interested, capable and equip for the preservation and immediate reactivation of rail service. In addition, APPLICANT is fully eligible to

participate within the **RAILROAD REHABILITATION & IMPROVEMENT FINANCING PROGRAM ("RRIF")**, administered thru the DEPARTMENT OF TRANSPORTATION, FEDERAL RAILROAD ADMINISTRATION 49 CFR 260. Eligible purposes include the acquisition, improvement or rehabilitation of intermodal or rail equipment and facilities including track, components of track, bridges, yards, buildings and shops. The program is designed to develop and establish new intermodal or railroad facilities. The program requires that eligible applicants be corporations, railroads and joint ventures that include at least one railroad. The strategic alliance between both **MCRS** and **MORRISTOWN & ERIE RAILWAY INC.** assures the participation within this program that has a statutory maximum amount of outstanding principal of **\$3.5 Billion**, of this **\$1 Billion** is reserved for projects primarily benefiting Shortline and Regional Railroads, of which **MCRS** qualifies. In addition, **MCRS** will also qualify for a number of Federal, State, Local Mass Transit and Freight Grant programs totaling **over \$21 Billion** – this funding is more than adequate to underwrite the development and construction of the Line and will be sufficient to address any liability concerns that the current owner of the Line may have to operate the Line for a minimum of three years following acquisition. Accordingly, APPLICANT should be found to be a **"financially responsible person"** in making its offer for the Line.

Moreover, a fully operational **HIGHLINE** will be self sufficient and profitable in this very dynamic market, since APPLICANT'S environmentally sensitive *state of the art* technology designed for this Line provides superior customer services and allows APPLICANT to address and adjust to market conditions and shippers demands in a cost efficient and timely manner -- therefore, not relying on any single industry for economic sustenance, but maintaining enviable flexibility to respond to an ever changing marketplace. Simply stated, if one can conceivably envision the possibility of an ethereal "*hovering park*" in existence on this Rail Line, it should be no effort at all for one to envision the successful reactivation of rail services on this RAIL LINE specifically designed to serve as the venerable "*Life line of New York*".

A dramatic amenity that this immediate community of 83,000+ residence and employees that live and work in the **Highline** "*corridor*" have dreamt about, with no prospects in sight, is a non-polluting and efficient unprecedented "on demand" mass transit system, clean, safe and professional, designed to accommodate both businesses and residents who no longer have to agonize when to expect marginal transportation during inclement weather or evening hours. APPLICANT'S "*shuttle craft*" system will be as convenient and simple as summoning a common elevator -- only *horizontally*! All without the enormous costs with inevitable residential and business disruptions that would accompany a subway or light rail installation -- completely circumventing the predictable destruction of the neighborhoods that the mass transit was designed to service. With the prospects of a new sports stadium, residential housing or convention center expansion on the horizon, APPLICANT'S "*shuttle craft*" mass transit system will have the unanticipated flexibility to accommodate the demands of our growing and vibrant City, efficiently offering a great value to the public. Each "station" fully staffed 24/7 and equip with amenities such as safe and secure public rest room facilities, refreshments, information and other services designed to assist visitors to this great City and the local native traveling public.

For years, there has been a rabid demand among local shippers to find a more cost efficient alternatives to the current labor and capital intensive, plus environmentally challenged motor carriage options that local and national shippers are forced to rely upon. The citizens of New York and the U.S. must have this fabled "*Life line of New York*" fully operational to supplement all traditional transportation options in every way possible in order to help address the massive rebuilding efforts as only the APPLICANT'S proposal can deliver. The public understands that since September 11th we live in a different world today. The local, state and federal governments are sensitive within all communities to do everything possible to lower all known and anticipated forms of terrorist threats (along with local unlawful conduct or vandalism) by eliminating any chance for catastrophic injury as a result of potential future terrorist attacks.

Since all entry onto the 1.6 mile **Highline** railroad can be easily monitored, APPLICANT'S technologies provides for unprecedented security, providing state-of-the-art "airport" quality inspection of 100% of all freight to deter contraband and would-be terrorists. APPLICANT'S proposal will incorporate custom designed explosive detection systems, technology incorporated that can scan all freight plus passengers with systems that employ *Computed Tomography* ("CT", similar to CAT-scan technology) to detect explosives and contraband. The technology to be employed is presently being effectively utilized world wide in over 50 airports. Currently, these security systems are based on a technology similar to *magnetic resonance imaging* to scan freight, baggage, parcels and mail and have accurately pin-pointed landmines and explosives in ultra-hostile environments. The technology has also been used in the lumber industry for years to scan lumber for defects or foreign objects and is used at over 300 sawmills worldwide. Today, and tomorrows climate dictates precautionary considerations. The **Highline** will be fully secure, in addition will provide a secure Germ Free Air System, incorporating *irradiation technology* to safeguard the public plus at greater risk **MORGAN PROCESSING CENTER'S** postal employees and virtually eliminate the threat of airborne bio-contaminates.

In response to potential use of the Line, CSX subsequently commissioned a study by the internationally renowned New York based **REGIONAL PLAN ASSOCIATION [RPA]** to research and publish their findings – "**WHAT TO DO WITH THE HIGH LINE?**". This report is encouraging since it determined that the obvious solution would be the reactivation of rail service for the lines future.

To date over \$1 million in studies have been commissioned to determine the **Highline's** future. A number of additional independent studies have been conducted since 1999 in reference to how best the community could benefit from the **Highline's** existence or removal. In addition to: "**What to do with the High Line?**" – REGIONAL PLAN ASSOCIATION [RPA] June 21, 1999; studies conducted to date include "**The Future of the High Line**" – Public Space Makers forum, Port Authority WTC, June 11, 2001; "**A Vision for the West Side Rail Yards**" Manhattan Borough

President, Nov, 2001: *"Far West Midtown – A Framework for Development"* – NYC Dept. of City Planning, Dec. 2001.

All studies unanimously illustrate the public's fervent support to preserve the *Highline* – plus each study universally agreed that the reactivation of rail service would best serve the public as a preferable option.

A number of major NYC shippers are presently adjacent to the Line, for example: as THE BOARD may be aware, both the *HIGHLINE* and Americas largest Postal processing plan the **MORGAN PROCESSING CENTER** (located on West 30th Street & 10th Avenue NYC), where planned and constructed simultaneously and specifically to increase Postal efficiency. The *HIGHLINE's* design dedicated six (6) tracks plus platforms intended to accommodate 36 rail cars at one time – built directly into the 2nd floor of the MORGAN, to receive and dispatch over 8,000 rail cars of mail annually though this facility from 1934 thru 1980 (when service was interrupted to accommodate the construction of the JAVITS CENTER and unfortunately never reconnected as guaranteed). Fortunately, the dedicated *Highline* "postal" spur is still intact and presently idle at the MORGAN facility.

Recently AMTRAK announced that it will eliminate mail service, plus the MORGAN is currently anxious to deal with the inevitable loss of its Manhattan based intermodal postal truck storage facility, presently on a *month-to-month* storage arrangement -- in addition to the ominous restrictions on vehicles entering mid-town Manhattan anticipated in the near future. APPLICANT'S technologies will effortlessly help in improving the MORGAN'S unfortunate (2nd poorest) nationally rated delivery by reactivating this historically efficient Postal dispatch and receiving facility with our technologically advanced 21st Century safety and efficient rail freight technology. APPLICANT can easily reactivate a customized "*siding*" dedicated to the Postal Service, allowing even greater capacity, efficiency and security than historically foreseen.

Another obvious client would be the JAVITS CONVENTION CENTER'S numerous vendors, exhibitors and attendees. The CENTER has had enormous concerns over the lack of sufficient

space to accommodate *spent* intermodal delivery trucks and containers while shows are in session. The problem will only escalate when the HUDSON YARDS adjacent to the Convention Center become developed as previously illustrated. Presently the Convention Center management habitually complains that there is insufficient parking/storage for the attendee's intermodal containers and trucks. A reactivated **Highline** would be the dramatic savior for the necessary intermodal freight shipments that are the *life blood* of the Convention industry. Simply by providing virtually an unprecedented environmentally friendly "*on demand*" direct shipping amenity, without the negative necessity of wasteful parking/storage that has been, and continues to be a necessary concern for the convention center, the **RAILROADS** would also be the enviable beneficiary of this considerable commerce.

APPLICANT'S proposal will be a major contributor to alleviate the every growing traffic congestion by offering shippers an intelligent and competitively priced shipping option that will dramatically help to alleviate surface congestion by replacing the trucking industries "colossal" overexploitation of all bridges and tunnels with APPLICANT'S "smart" intermodal containers efficiently delivered *via* on-premises, non-polluting environmentally sensitive rail technology.

APPLICANT estimates when fully operational this offering will create 100 full time jobs for our neighbors, in addition to expanding the effective mission of FORTY PLUS -- America's oldest employment authority, that will further assist over 1,000 unemployed New Yorkers annually in obtaining gainful employment -- dramatically impacting our local economy.

The current City administration has voiced its frustration to find alternatives for the age old problem of rubbish removal, currently dependent on cost prohibitive and environmentally challenged truck transport. The administration recently proposed to modify its current inefficient fleet of sanitation trucks to a model that will incorporate sealed interchangeable and standardized intermodal containers to be transferred on to waiting river barges at the decades dormant "*intended*" reactivated Marine Dispatch Terminals -- but officials still remain stymied by the

anticipated colossal sanitation truck exceeding access capacity transfer queues. *Interestingly*, these Marine Terminals and the **Highline** have been *dormant* approximately the same period, and this “old” inspired transfer option could never have been visualized if these Piers had been abandoned and for example, “*altered*” into a restricted access *floating* park! The Cities “new” practical intermodal system would expediently completely eliminate the objectionable transfer stations and would be an ideal candidate to benefit from APPLICANT’S ingenious technology on a reactivated **Highline**, plus completely eliminate all potential sanitation truck transfer queues. The resulting environmentally sensitive efficiency that would effectively eliminate the colossal traffic congestion resulting from the obvious *limited* queue access at the Marine Terminals and would result in dramatic cost savings for the City by providing each individual neighborhood with an efficient and discreet method of responsibly dispatching their own rubbish while eliminating a serious environmental hazard currently imposed on beleaguered neighborhoods reluctantly hosting the current repugnant rubbish transfer stations.

As a result of the above, an unprecedented bonus for the **RAILROADS** of intermodal containerized shipping that could easily generate over \$150 Million annually would materialize, from which they **NEVER** would have had access to this windfall without an innovative cooperative professional relationship that APPLICANT is offering with a reactivated **Highline**.

APPLICANT is aware of a number of private sector industries that would be *euphoric* if they could take advantage of the customized shipping services that a reactivated intermodal savvy **Highline** could offer -- thus assuring long term economic vitality of this enterprise. With the introduction of APPLICANT’S intelligent proposal we essentially have designed a virtual “turn key” railroad enterprise that can be a standard for other inner-City Shortline railroads to emulate.

There are more than 500 North American short line and regional railroads in the U.S. today -- which are an important and growing component of the railroad industry. Today they operate and maintain over 29% of the American railroad industry’s route mileage, 50,000 miles of track is

owned, maintained and operated by non-Class I railroads and account for 9% of the rail industry's freight revenue and 11% of the railroad employment. The short line and regional railroads have a long proud history of being viable by being flexible and achieving efficiencies wherever possible and service-focused innovators in railroad business. In many cases just as this application illustrates, they have found a way to succeed where others have failed, and have saved thousands of miles of rail lines that were near abandonment.

Shortlines and regionals represent the "growth segment" of the rail industry. The number of small railroads has more than doubled since the STAGGERS RAIL ACT of 1980, from about 220 companies in 1980 to more than 500 today. A change in the law in 1980 revised the line sale mechanism and abandonment provisions. The effect of these changes have been to encourage the sale of lines that were identified as surplus or slated for abandonment by their Class I owner.

This approach works remarkably well and has helped to transform the rail industry. Entrepreneurs bought hundreds of light density lines across the country. With business plans that typically include more attention to customers, innovative marketing, *state-of-the-art* technology, flexible and "user friendly" service, lower operating costs and a "*can do*" attitude, these new operators have been able to turn around the majority of these lines where their previous owners just gave up on them.

At the same time, the railroad industry has undergone a transformation and restructuring. The light density gathering network feeds traffic to the high volume trunk line core system. Today, the restructured U.S. rail industry is the envy of the world, and widely studied as a model of restructuring for rail efficiency.

The operators of the new, small railroads are able to profitably provide specialized community-oriented service not practical for the larger railroads. The communities served by the railroads keep rail services that help their business stay competitive in the world market. A small

local company performs the service. It has a stake in the community, provides local jobs, appreciates the business and strives to satisfy the precise transportation needs of its shippers.

The major railroad systems are streamlining their operations and focusing on what they do best – long-haul, high volume, high speed service. At the same time, they continue to participate in moving most of the freight that originates or terminates on small railroads. For thousands of shippers in thousands of towns across the nation, small railroads provide the initial, cost-efficient connection to markets all over the country. Small railroads can be viewed as the “retail” portion of the railroad industry. They pick up and deliver rail traffic for a variety of shippers.

Small railroads are also involved in intermodal service and provide transfer facilities in many areas. Many short lines are diversifying into warehousing, storage and other value-added services in order to meet shipper’s needs. As the rail network nears capacity in some areas of the country, small railroads such as APPLICANT’S proposal, dramatically help bypass congested areas to keep freight moving. The 50,000 miles of Shortline and regional railroad infrastructure in the U.S. is an underutilized asset that offers opportunities for future growth. Short line and regional railroads today operate many of the secondary routes and branch lines spun off by Class I railroads. Many portions of this country depend exclusively on short line and regional railroads for their rail service needs. In addition, Short lines also fill a vital transportation function providing local rail service for small shippers and by operating alternative routings for bridge traffic.

In legislative matters before the Congress and in regulatory and legal proceedings before THE BOARD, other federal agencies and in the courts, the AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION “ASLRRA” advocates enlightened public policies which promote a strong regional and short line rail component for the national transportation infrastructure. With regard to the APPLICANT’S interests in the *Highline*, it is significant that no public project or alternate use for the right of way is being impeded by the proposed operation of rail service

on the Highline. Short line railroads, are locally based and have the knowledge of the local economy and the flexibility to develop rail opportunities that may have not been imaginable in the past. Indeed, in buying low-density rail lines from Class I railroads, they rely on these abilities to grow and succeed. Thus, so long as APPLICANT is making good faith reasonable efforts to develop rail uses for the line, it should be given the opportunity to preserve rail service opportunities.

The ASLRRA strongly believes that adverse abandonment cases such as the one now before THE BOARD present a serious threat to the long-term viability of the national rail infrastructure. They particularly threaten short lines for whom these seemingly small and insignificant pieces of rail line are much more critical to their economic and operational viability than to vast and powerful Class I national railroads.

If FEEDER LINE applications such as this one are not granted by THE BOARD, it will slowly but surely chip away small chunks and pieces of the national rail infrastructure to the detriment of future generations of shippers whose rail transportation needs, though unimagined today, must nevertheless be protected today if they are to be accommodated in the future. Taken alone, small FEEDER LINE requests may seem insignificant, but like drops of water they can collectively strengthen the national rail infrastructure and help short line businesses to grow and prosper, as the necessity of a strong rail system for the future becomes clearer every day.

A number of residual benefits that one may have never imaged resulting from the *Highline's* reactivation -- the *Highline* corridor neighborhood has long been promised for several decades (*but unable to deliver*) that the City would remove the garbage trucks, city buses and the police tow-pound from the various piers within their community to be included in the new Hudson River Park (located directly adjacent to the Highline). APPLICANT's offering can effectively assist the City to keep its long overdue (and somewhat forgotten) commitments, which would provide the *Highline* corridors residence with over twice the area of the *Highline's* total deck with a generous

14+ acres of recreational landscape on the river front conveniently located next to the **Highline** with gracious ease of “normal” street level access for the public into their river front park.

As many short lines are diversifying into warehousing, storage and other value-added services in order to meet shippers needs, APPLICANT’S proposal will remarkably and virtually immediately provide an environmentally sensitive solution and accommodate both the Sanitation Department’s vehicles plus storage of equipment and containerized supplies – all delivered “on demand” in addition, secure and efficient storage and retrieval (on demand) of both commuter buses – with over 700+ of those buses arriving daily, contributing to massive volumes of traffic congestion and pollutants, and as a magnificent added bonus finally liberate Pier 76 as the City’s tow-pound. As the rail network nears capacity in some areas of the country, small railroads such as the **Highline** can help bypass congested areas to keep freight and traffic moving efficiently. The underutilized **Highline** will still continue to be the “*life line*” it was designed for... but for an *evolving* new clientele to service an *evolutionary* new century.

APPLICANT expects to rely on its impressive relationship with **FORTY PLUS’** vast and growing network of corporate and public contacts, donors and financial institutions to obtain financing from both private and public resources to support this acquisition. The strategic alliance between **MCRS** and **MORRISTOWN & ERIE RAILWAY INC.** virtually assures the productive rehabilitation of services on the **Highline** and underscores a solid history of profitable operations within a dynamically changing marketplace where **MORRISTOWN & ERIE RAILWAY, INC.** thru dogged determination, flexibility, versatility and persistence has historically acquired marginal rail lines that are likely to be abandoned or are receiving inadequate rail service and successfully manage these lines into profitability and has survived for over one hundred years. Even during the shock and confusion of 9/11 and the 2003 massive East Coast power black out **MORRISTOWN & ERIE RAILWAY INC.** continued operations uninterrupted. Their history of success along with the growing crescendo within our community to preserve and reactivate rail services on the

HIGHLINE, plus **FORTY PLUS**, a highly credible and responsible non-profit who's dramatic impact within both NYC and the U.S. by placing over 100,000+ Americans to date, in gainful employment -- demonstrates the universal support and seriousness of purpose, that this proposal has generate within both the private and public sectors.

(2) **AN ESTIMATE OF THE NLV AND THE GCV OF THE LINE AND EVIDENCE IN SUPPORT OF THESE ESTIMATES.**

CONRAIL has consistently and publicly stated that the *Highline* has a zero net liquidation value because CONRAIL did not own the right-of-way underlying the elevated line, and the astronomical cost of dismantling the line offset its salvage value. By decision served September 28, 1984, the INTERSTATE COMMERCE COMMISSION (ICC) fixed the purchase price of the line at **\$10.00** and set terms and conditions for the purchase.

APPLICANT estimates the net liquidation value ("NLV") of the line to be **\$41.00** (considering inflation) based on the ICC 1984 decision. Further, APPLICANT believes that the rights and interests that APPLICANT seeks to acquire from the **RAILROADS** have no **GCV** to the **RAILROADS** since the line has been dormant and steeped in litigation over the past 20 years. Accordingly, APPLICANT bases its application and offer to purchase on NLV.

NLV: Since little has changed since 1984 in regards to the Line when the ICC had fixed the purchase price of the line at **\$10.00** -- with the exception that there has been understandable deterioration (plus vandalization) of possible salvageable material since 1984, and the cost to salvage has risen geometrically, off-setting any salvage value -- although CSX maintains that the viaduct is structurally sound, factoring in inflation **MCRS**, estimates the NLV of the line at **\$41.00** (Forty one dollars), comprised of unusable rail and track material removal costs and **\$-0-** [\$ zero] for real estate. This is the higher of two, in short, CSX has publicly documented to THE BOARD that CSX believes that the *Highline* has a negative NLV and no GCV to CSX.

Accordingly, the rights and interest that APPLICANT seeks in this proceeding will not deprive CSX of anything to which CSX would ascribe GCV.

While APPLICANT believes that the Line as a whole is valuable, CSX has treated the Line since it's acquisition of CONRAIL as an unwanted liability and a major distraction from its core businesses. Accordingly, APPLICANT submits its offer for the Line based on the NLV thereof.

- (3) **AN OFFER TO PURCHASE THE LINE AT THE HIGHER OF THE TWO ESTIMATES SUBMITTED PURSUANT TO PARAGRAPH (A)(4) OF THIS SECTION.**

APPLICANT hereby offers to purchase all of CSX's right, title and interest in the *Highline* between Mileposts 9.35 and 10.47 for \$41.00 (Forty one dollars) the Line's NLV. Furthermore, APPLICANT as a 501(c)(3) non profit organization, also recommends in the alternative to the RAILROADS, to accept the Line as a charitable donation along with a minimum \$7 Million cash contribution in which the RAILROADS may obtain a tax deductible benefit and be relieved of all future liability and expenses.

PROPOSED OPERATION

- (4) **THE DATES FOR THE PROPOSED PERIOD OF OPERATION OF THE LINE COVERED BY THE APPLICATION.**

APPLICANT intends to close on its purchase of the Line as soon as possible following THE BOARD'S approval of its application, hopefully within 30 days after that approval is received. APPLICANT intends to operate the line on a continuing basis, being not less than three years from the date APPLICANT acquires the Line.

- (5) **An operating plan that identifies the proposed operator; attaches any contract that the applicant may have with the proposed operator; describes in detail the service that is to be provided over the line, including all interline connections; and demonstrates that adequate transportation will be provided over the line for at least 3 years from the date of acquisition.**

APPLICANT will be the operator of the line. APPLICANT will, as a result of this application, interchange with the RAILROADS at or near milepost 9.35 and along AMTRAK's service line the upstate NEW YORK EMPIRE – the former NEW YORK CENTRAL (later PENN CENTRAL) freight line

extending from the DV Tower at Spuyten Duyvil (milepost 0.0), Bronx, NY. APPLICANT will coordinate with **MORRISTOWN & ERIE RAILWAY INC.** in management and planning in the development of **ROBOTIC RAILWAY SYSTEMS, INC.** patented MODULAR AUTOMATED FREIGHT SYSTEMS, the *state-of-the-art* intermodal rail freight technology to be incorporated within the **Highline**. APPLICANT'S fully customized rail systems meet all Class I track condition specifications and ensures optimum 24 hour & 7 day "*on demand*" shipper-friendly and universally compatible freight throughput. APPLICANTS' intermodal freight system is a natural evolution of present railroad technology, offering many advantages and solving a number of problems typically associated with conventional freight and passenger facilities. The **Highline** will be silent, pollution free and energy efficient.

APPLICANT will provide the shipper with totally "*user friendly*" technology designed to be easy and efficient to use, plus safer than any conventional rail freight facility: the entire freight shipping and/or retrieval process is completed within minutes in secure and comfortable ADA compliant facilities. The system is designed for ultimate reliability with triple + redundancies, including back up power – built to demanding Class 1 track conditions and military specifications incorporated within the design with infallible manual overrides. Furthermore, this intermodal freight system provides the ultimate *peace-of-mind* since shippers; the general public and unauthorized parties do not have access to the freight areas, which eliminates the threat of vandalism, accidental damage or theft. In addition, since the rail cars are used to ship, store and retrieve freight, there is no chance for machinery-caused damage.

APPLICANT has designed this system to provide services that meet the service needs of our target audience, both local and national shippers. Initially, service will be offered locally along the **Highline**, and expanded Nationally as soon as the connection to the national rail system *via* the **AMTRAK'S** service line is completed and tested. Since APPLICANT'S intermodal technology is automated and "on demand", there would be no traditional "train schedules" to restrict shippers

access -- that translates to service on a 24 hour 7 day basis. As traffic levels are increased APPLICANT anticipates being able to provide greater access and availability to address our shippers needs on the Line.

Based on anticipated traffic levels, APPLICANT estimates that it will cost \$50,000 per month for the first 12 months to operate the Line. Additionally, during that time, \$10 million will be required to restore the track structure to safe Class I track condition, to provide efficient and safe operating conditions on the Line. After the first 12 months of operation, APPLICANT anticipates the need to increase services and access to the facility to prepare for National shipping demand. While this will increase operating costs, there will also be a resulting increase in revenue.

Altogether, APPLICANT estimates the cost of rehabilitating the Line and operating it at the service levels discussed in the preceding paragraph to be \$30 million for the first three years.

These operations are anticipated to yield revenues of approximately \$38 million.

- (6) **A description of the liability insurance coverage carried by applicant or any proposed operator. If trackage rights are requested, the insurance must be at a level sufficient to indemnify the owning railroad against all personal and property damage that may result from negligence on the part of the operator in exercising the trackage rights.**

The APPLICANT will maintain insurance that covers claims arising from personal injury and property damage in the event of derailments or other accidents or occurrences.

- (7) **Any preconditions (such as assuming a share of any subsidy payments) that will be placed on shippers in order for them to receive service, and a statement that if the application is approved, no further preconditions will be placed on shippers without Board approval. (This Statement Will be Binding Upon Applicant if the Application is Approved.)**

Absent BOARD approval, no preconditions will be placed upon shippers in order to receive service. APPLICANT is not seeking BOARD approval for any such conditions at this time.

- (8) **The name and address of any person(s) who will subsidize the operation of the line.**

No person is expected to subsidize operation of the Line. The strategic alliance formed between both **MCRS** and **Morristown & Erie Railway Inc.** assures the participation within the **RAILROAD REHABILITATION & IMPROVEMENT FINANCING PROGRAM ("RRIF")** that has a statutory maximum amount of outstanding principal of **\$3.5 Billion**, of this **\$1 Billion** is reserved for projects primarily benefiting Shortline and Regional Railroads, of which **MCRS** qualifies. In addition, **MCRS** will also qualify for a number of Federal, State, Local Mass Transit and Freight Grant programs totaling **over \$21 Billion** – that is more than adequate to underwrite the development and construction of the Line and will be sufficient to address all insurance requirements and any liability concerns that the current owner of the Line may harbor to operate the Line for a minimum of three years following acquisition.

APPLICANT anticipates that any future funding needs will be satisfied from revenues generated by operations, financing from public and private sources or commercial loans. Moreover, a fully operational **HIGHLINE** will be self sufficient and profitable in this very dynamic market, since APPLICANT'S environmentally sensitive *state of the art* technology designed for this Line provides superior customer services and allows APPLICANT to address and adjust to market conditions and shippers demands in a cost efficient and timely manner -- therefore, not dependent on any one industry for economic support, but will maintain enviable flexibility to respond to an ever changing marketplace. Accordingly, APPLICANT should be found to be a "financially responsible person" in making its offer for the Line.

THE LINE MEETS THE REQUIREMENTS OF 49 U.S.C. SECTION 10907

- (9) **A statement that the applicant will seek a finding by the Board that the public convenience and necessity ("PC&N") permit or require acquisition, or a statement that the line is currently in category 1 or 2 of the owning railroad's system diagram map.**

APPLICANT seeks a finding by THE BOARD that the public convenience and necessity requires or permits the sale of the Line to APPLICANT.

(i) If the applicant seeks a finding of public convenience and necessity, the application must contain detailed evidence that permits the Board to find that:

- (A) The rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;

the RAILROADS has made it crystal clear to THE BOARD and APPLICANT that it would take *"no position"* in reference to the future of the Line and;

"encourage the Board to decide the issue of the Highline's future as soon as reasonably possible."

Since the CONRAIL acquisition in 1999, CSX as owner; to ensure that the structure poses no public safety hazards in response to inherited building violations -- continually maintains that the structure is sound.

"Conrail and CSX Corporation and CSX Transportation, Inc. ("CSX") have spent millions of dollars in maintenance expenses, property and other taxes and counsel and consulting fees in connection with the Highline since the railroads' efforts to reach a Settlement Agreement began over four years ago. Additional delay in resolving the disposition of the Highline will impose substantial additional costs on the railroads" July 29, 2003 CONRAIL response to the Board

- (B) The transportation over the line is inadequate for the majority of shippers who transport traffic over the line;

AS THE BOARD is aware the RAILROADS portray the Line as being *"in limbo"* for the past 2 decades.

- (C) The sale of the line will not have a significantly adverse financial effect on the rail carrier operating the line;

APPLICANT'S offer will not harm the RAILROADS' finances. Rather, through substantial tax benefits and the elimination of legal, maintenance, consulting and tax expenses, it will dramatically improve the RAILROADS' finances (as previously illustrated) plus allow the RAILROADS to relieve itself of an acknowledged liability that they clearly documented in August 26, 2003;

"Consolidated Rail Corporation ("Conrail") takes no position on this novel legal issue, other than to encourage the Board to decide the issue as soon as reasonably possible. Conrail and CSX Corporation and CSX Transportation,

*Inc. ("CSX") **have spent millions of dollars** in maintenance expenses, property and other taxes and counsel and consulting fees in connection with the Highline since the railroads' efforts to reach a Settlement Agreement began over four years ago. Additional delay in resolving the disposition of the Highline **will impose substantial additional costs on the railroads.**"*

*"Conrail and CSX have devoted enormous time and expense to the matter of the Highline. We have worked hard to try to accommodate the interests of as many parties as possible, but the current state of **limbo** should not be allowed to continue. Once again, Conrail encourages the Board to move forward as rapidly as reasonably possible to decide the motions before it."*

"Statement of "Consolidated Rail Corporation in Response to July 29, 2003 Order of the Board";

APPLICANT'S offer will allow the RAILROADS to dispose of a liability it does not want -- and once APPLICANT reactivates the *Highline*, we will provide the RAILROADS shippers an attractive option of ready direct access into the most lucrative market in the country. Accordingly, because APPLICANT'S offer will allow the RAILROADS to shed a liability it does not want, plus maintain access to a potential limitless market -- the RAILROADS will not be harmed financially by a grant of this application.

(D) The sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line; and

For the reasons set forth under paragraph "C" immediately above a grant of this application will have no negative impact on the RAILROADS operations what so ever. Upon the acquisition of the *Highline* by CSXC on June 1, 1999, the RAILROADS management has carefully reviewed the feasibility of maintaining the *Highline* in light of CSX efforts to streamline their operations and focusing on what they do best -- long-haul, high volume, high speed service CSX management has concluded that the *Highline* would not be economically viable within CSXs' Class I fiscal objectives. Subsequently, in view of the "novel legal issues" that have plagued this line and predate the RAILROADS ownership, plus the ongoing expense of maintaining the legally encumbered *Highline*, the RAILROADS management concluded that the *Highline* would be an excellent candidate for liquidation. Subsequently, in response to the growing community demand to preserve the *Highline*, the RAILROADS management recruited the STB board to assist in the

transfer of ownership. The adjacent property owners will also realize a dramatic bonanza with welcomed appreciation of their property value without re-zoning, since they now will have a priceless amenity and a cooperative operator, that can provide desirable services and convenience long thought lost. With shipping and mass transit amenities adjacent to their properties, these owners will be the envy of the City and experience the demand that the original pioneering property owners had encountered when the *Highline* was first inaugurated in the 1930's after a meticulous 80 years of planning, acquisition and construction.

The revitalization of the *Highline* will provide employment and unforeseen recreational and quality of life benefits thru the brilliance of its design and purpose that offers opportunities for immediate economic growth -- plus a proud *catalyst* for improving the quality of life not only in the *Highline* corridor but throughout NYC.

A disturbing by-product of the recent proliferation of residential and commercial activity within the *Highline* corridor, has resulted in numerous pedestrian injuries and fatalities plus property damage, caused by the increase in both trucking and population -- that the original purpose of the *Highline* on a grade separated right-of-way to replace the original perilous street-level tracks laid along 10th and 11th Avenues then know as "*Death Avenue*" will, via APPLICANTS offering, once again provide protection and safety to the community as it now comes full circle

(E) The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.

For the reasons set forth under paragraph "B" above a grant of this application will immediately reactivate this Line and dramatically provide railroad transportation for shippers who wish to transport traffic over the Line. The principal difference between the RAILROADS, THE CITY and CPO with respect to the Line is that APPLICANT wants to operate the Line; the RAILROADS, THE CITY and CPO do not.

APPLICANT will also bring an aggressive, forward thinking approach to service on the Line as a **Class III Short line**, incorporating state-of-the-art and environmentally responsible, non-polluting intermodal freight technology to generate self-sufficient profitability and competitively priced rail services designed to address current and growing local and national shipper's demands.

APPLICANT will provide valuable freight redundancy that will dramatically alleviate surface street congestion, reduce pollution, contribute to pedestrian safety and the quality of life in NYC while further be instrumental in reducing hydro-carbons and oxides of caustic nitrogen per mile. Study's confirm, generated by inefficient and costly truck transports that congest city streets and who's pollutants double as each vehicle ages and furthermore contribute vast volumes of carbon monoxide that lead to principal causes of global warming plus debilitating and lethal respiratory health ailments within our community.

APPLICANT'S acquisition will generate much needed employment and institute essential community employment support programs thru FORTY PLUS, funded by a reactivated *Highline*. Presently the battle is to make New York's economy healthy as the biggest and richest freight port on the East Coast – and create thousands of freight/transportation dependent jobs – this hinges on the future of NYC's fabled transportation infrastructure. Experts predict that in 10 years with the freight industry adopting an airline-style *hub-and-feeder* system, there will be only one major East Coast port between Canada and Mexico. If we do not aggressively support benefits new freight transport technology offers our New York-New Jersey market (presently the third-busiest port in the nation) NYC/NJ loses its competitive advantage. The New York region could lose 40% of its current **230,000+** freight-dependent jobs, according to a Port Authority study -- that is over 92,000 jobs at risk! The same study illustrated if New York were to upgrade its transportation infrastructure, it would multiply freight commerce and jobs by **800%** to **1,000%** during the next 40 years. FORTY PLUS (established in NYC in 1939 and parent of MCRS) is a national and local

authority on how to generate employment -- we recognize the dramatic impact that a reactivated **Highline** would contribute in our tri-state region.

PORT AUTHORITY studies show the NY-NJ ports are now operating at 90% capacity and that demand for cargo space will triple in the next 15 years. Complicating future shipping development is the severe difficulty of accommodating shipper's goods into and out of Manhattan.

A new study recently reported that drivers could save an astonishing 53 hours a year in travel time if only 25 percent of freight shipments were brought into the City on the rails and not the roads. The report also found that New Yorkers could each save 254 gallons of fuel a year, reducing congestion and pollution;

"Rail freight is a significant part of the solution for New York City's highway gridlock problems,"

Wendell Cox, a transportation expert who authored the study.

New rail freight development such as a reactivated **Highline** would boost the city's economy, reduce traffic congestion and improve air quality.

"For too long we have suffered from over-reliance on trucks to move our freight, with serious consequences to our economic vitality and quality of life" ... [by incorporating rail systems into NYC operations] "we could potentially divert approximately two million tons of freight a year from truck to rail and eliminate tons of air pollutants annually."

The NYC EDC recently highlighted the importance of promoting rail freight in NYC:

Additionally, a recent NEW YORK UNIVERSITY study analyzed the environmental and public health effects associated with living near pollution sources, in particularly major city thoroughfares dealing with respiratory related health issues in New York City. The study confirmed that New Yorkers suffer from the worst rates of asthma in the country, with over 10 percent of schoolchildren and more than 6 percent of the total population affected by the chronic respiratory disease. Behind this respiratory illness epidemic are several local factors that contribute to this alarming explosion. Diesel trucks are omnipresent; creating dangerous levels of air pollution – the study, using a mobile van laboratory to analyze hourly concentrations of diesel

exhausts reveals that the concentrations of nitrogen dioxide, sulfur dioxide and carbon monoxide are substantially higher than samples taken from rooftop monitoring sites. Air pollution is often more severe closer to the ground, and so it is important that it be studied where people actually are (on the ground) the pollution from these trucks has been specifically linked to severe asthma attacks.

Asthma, for example, is the number one cause of student absenteeism in New York City schools, where children are hospitalized for asthma at a rate 1,000 percent higher than the rate for children in New York State as a whole. The study underscores how poor New Yorkers bear a disproportionate share of the burden of our city's air-borne disease. As it stands now; many of NYC children only get their asthma treated when it becomes so bad that they have to go to the emergency room.

This illustrates that we should pursue technological and transportation solutions to environmental challenges, more environmentally friendly companies such as APPLICANT provide economic growth, solutions and a cleaner environment shattering one of the great myths of our day that holds that environmental protection and economic growth are incongruous.

As further confirmation of the intelligent need for greater rail freight technology today, in the interests of national security, officials feel the time is right for a bold plan proposed more than 80 years ago: a \$7 billion rail freight tunnel under NY harbor. More than 90% of everything that comes into NYC is *via* the George Washington and Verrazano bridges. According to a new environmental impact study the development of rail freight alternatives would generate more than 30,000 new jobs and remove more than 1 million trucks off the city's street per year. As freight demand grows the necessity of providing the City with **additional secure** and environmentally **sensitive freight redundancy** confirms the importance of rehabilitating and reactivating the Highline ASAP. As in the *Highline's* prime and now imminent future, it can continue to be the "lifeline of NYC" for the hope and health of our City and Nation -- **as Manhattan's only**

environmentally sensitive direct rail freight link. APPLICANT, by this application is committing itself to work to develop traffic, provide service needed by shippers, to engage in industrial development efforts, and to upgrade the Line. All of these will lead to a better and environmentally sound alternative for shippers. New routes and new pricing opportunities will be available to shippers; in short, shippers will have the benefit of competition which they have not had before. Local and National shippers will benefit from the grant of this application.

A recent article in **the New York Times** clearly illustrates the dramatic economic changes brought on by innovative new technology presently taking place within the New York tri state marketplace that further supports **the public convenience and necessity** that this application illustrates. The Port of New York the sprawling harbor, which transformed New York into a world commercial capital in the 1800's, fell into a humiliating slump in the second half of the 20th century as other North American seaports thrived, particularly on the West Coast and in the South. But the tide has reversed for New York, driven by the explosion of trade with China, which each year is manufacturing a larger share of goods for American stores.

Trade through the Port of NY, which was shrinking or flat a decade ago, has grown faster in the last five years than at any point since just after World War II. The rate of that surge – a **65% increase** in overall container traffic since 1998 – has been nearly twice the national average, and faster than that of any other major East Coast port (except Savannah, Ga.) Last year, **\$100 billion** worth of wares moved through the port, **up 12% in just a year.**

That new bustle signals a startling change in global shipping as a results of innovative new technology designing essentially “floating warehouses” that now travel the oceans with over five times the cargo capacity and at almost 60% greater speeds than their 1960 era predecessors, forming a weekly shuttle from Asia called the NYX or “*New York Express*”, sailing directly from Asia, called the “All Water Route” services to NY have cut traveling times so drastically that many goods once unloaded in California and carried across the country by train nicknamed the

"mini land bridge" are now shipped directly to NY; there are nearly 20 shipping lines today, most of them just started in the last five years. Today only 65% of Asian goods destined for NY landed first in California, down from 86% in 1999, according to an analysis by the PANAMA CANAL AUTHORITY – costing about \$300 to \$600 less per container, a significant savings for cost-conscious retailers.

Thru new technology having cut labor costs, New York is winning the confidence of ship lines, manufactures and merchants, effectively becoming a satellite of the Pacific Rim. Last year, four centuries after being settled by the Dutch, a milestone was reached: New York became an Asian-dominated port instead of a European one.

There are concerted efforts by the Port Authority of NY and NJ, which was caught off-guard by the strength of the resurgence, to exploit or even handle all the trade headed its way. But it is straining to respond, the authority and the operators of ship terminals that lease its land have begun **\$1 billion** worth of expansion projects, including **bigger rail yards**, needed to respond to the ports physical limits that can no longer accommodate the volume and expense of the already, long lines of tractor-trailers that have reached their access capacities. Presently a **\$2.25 billion** "dig" continues night and day, seven days a week, thought the next decade on one of the most extensive and expensive harbor-dredging projects in the nation's history to make way for the new generation of freighters that the Port presently can not accommodate.

To move the goods pouring in, about 3,500 longshoremen have been hired in the last five years, and thousands of workers have been added to the more than 100,000 the port directly supports, including truck drivers, railroad workers, warehouse stockers and marine bankers. As the expansion enables the port to accept bigger ships, goods will get to New York and into the stores more quickly and cheaply, reducing prices for consumers and manufactures in the region, according to an Army Corps study.

Port Authority officials say they are confident that their investment will pay off; it does not want to repeat the mistakes that have been made in the past by ignoring how important the ports and transportation are. The rail lines and highways link the terminals to the rest of the country, the goods come in huge containers rather than in smaller crates, and most of their handling is **automated**, increasing workers productivity by over 700% since 1955. Predictions, as recently as 1999 concerning the number of containers passing through the Port originally estimated to grow by 3.5 to 4 percent annually, now, after five years during which the average annual growth in container cargo has been 8.6 percent -- all plans have become an urgent sprint to finish all expansion projects before the spike in traffic overwhelms the port.

It is important to note that to shippers New York at the center is identified as the **richest consumer market in the world**, where 80 million people live within a 24-hour drive. The Port recognizes the importance that technology has to offer, with its' investment in a toll-booth-like complex where cameras automatically record identification numbers on trucks and containers - allowing 10,000 trucks to move in or out each day, nearly double the current capacity. Nearby, an **18-track express railyard** is replacing the existing 4 tracks, permitting as many as 750,000 containers a year to move through by rail by 2008, compared to 230,000 last year. Trucks carry about 85 percent of all freight in and out of the port, so to keep from overloading the highways, the authority hopes to nearly **double the use of rail** by 2020.

Excerpted from; *The New York Times*;
"New York Port Hums Again, With Asian Trade"
by Eric Lipton November 22, 2004,

The current limitations of trucking to access Manhattan will be further tested in the near future. The obvious growing demand for an environmentally and economically responsible rail link into Manhattan can only be accomplished with an automated *Highline*. **On behalf of the public convenience and necessity** the Board has sufficient documentation to underscore the

importance of reactivating this valuable Line and in the interest of the public convenience and necessity should approve this application.

Finally, community support for the preservation and reactivation of this Line clearly demonstrates that shippers and the community will be better served by the APPLICANT than with any other offerings to date. Such support has been exhibited throughout the proceedings relating to this Line.

- (ii) **If the applicant seeks a finding that the line is currently in category 1 or 2 of the owning carrier's system diagram map, the relevant portion of the current map must be attached to the application:**

APPLICANT does not seek a finding that line is shown in Category 1 or 2 on the RAILROADS system diagram map.

ADDITIONAL INFORMATION

- (10) **A statement detailing applicant's election of exemption from the provisions of Title 49, United States Code, and a statement that if the application is approved, no further exemptions will be elected. (This Statement Will Be Binding Upon the Applicant if the Application is Approved.)**

APPLICANT does not choose to be exempt from the provisions of Title 49 of the U.S. Code pursuant to authority available under 49 U.S.C. Section 10907(g).

- (11) **A description of any trackage rights sought over the owning railroad that are required to allow reasonable interchange or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the applicant, and an estimate of the reasonable compensation for such rights, including full explanation of how the estimate was reached. The description of the trackage rights shall include the following information: Milepost or other identification for each segment of track; the need for the trackage rights (interchange or traffic, movement of equipment, etc.); frequency of operations; times of operation; any alternative to the use of trackage rights; and any other pertinent data. Trackage rights that are necessary for the interchange of traffic shall be limited to the closest point to the junction with the owning railroad's line that allows the efficient interchange of traffic. A statement shall be included that the applicant agrees to have its train and crew personnel take the operating rules examination of the railroad over which the operating rights are exercised.**

APPLICANT is not requesting trackage rights over the RAILROADS for purposes of interchange or to move equipment between noncontiguous feeder lines. APPLICANT will, as a result of this

application, interchange with the **RAILROADS** and **AMTRAK** at or near milepost 9.35 and along **AMTRAK**'S service line the upstate **NEW YORK EMPIRE** – the former **NEW YORK CENTRAL** (later **PENN CENTRAL**) freight line extending from the DV Tower at Spuyten Duyvil (milepost 0.0), Bronx, NY

- (12) **If applicant requests Board prescribed joint rates and divisions in the feeder line proceeding, a description of any joint rate and division agreement that must be established. The description must contain the following information:**
- (i) **The railroad(s) involved;**
 - (ii) **The estimated revenues that will result from the division(s)**
 - (iii) **The total costs of operating the line segment purchased (including any trackage rights fees).**
 - (iv) **Information sufficient to allow the Board to determine that the line sought to be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year; and**
 - (v) **Any other pertinent information.**

APPLICANT does not request the establishment of joint rates and divisions at this time.

- (13) **The extent to which the owning railroad's employees who normally service the line will be used.**

In light of the current condition of the Line and the rehabilitation that will begin upon THE BOARD granting of this application it is not anticipated that APPLICANT will require additional operating employees in the near term in order to provide service on the Line. To the extent that rehabilitation of the Line is required, APPLICANT intends to perform that work with its own forces or to use outside contractors.

Because the **RAILROADS** have not actually "operated" the Line since 1980's, it is not anticipated that this transaction will result in any displacement of current **RAILROADS** operating employees. Similarly, due to the lack of service on the Line, the **RAILROAD** has performed little or no maintenance on the Line (other than to conform to several NYC building code violations several years ago) as a result of the interruption of service over the past 20 years, while the approximately 1.6 miles of trackage has required only limited if any maintenance other than security. Accordingly, APPLICANT does not anticipate that any of the **RAILROADS** employees have spent a

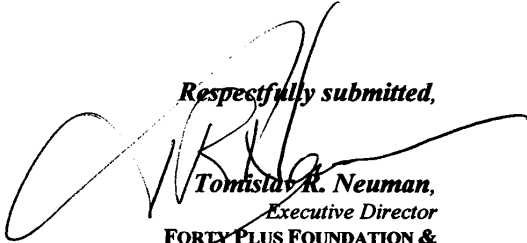
majority of their working time performing labor that would be discontinued as a result of transferring ownership of the Line to APPLICANT.

Should current **RAILROADS** employees be displaced as a direct result of this transaction and should APPLICANT require additional employees in order to conduct operations on the Line, APPLICANT is willing to accept employment applications from former **RAILROADS** employees and to accord such persons priority over other, equally-qualified applicants. To be hired, all applicants must be qualified by training and other capabilities to fill an available position and be willing to accept employment under the terms and conditions available to APPLICANT's employees.

- (14) **A certificate stating that the service requirements of § 1151.2(a) have been met.**

See Certificate of Service attached hereto.

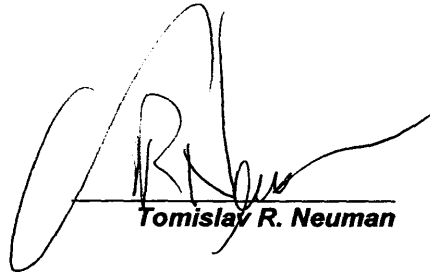
Respectfully submitted,


Tomislav R. Neuman,
Executive Director
**FORTY PLUS FOUNDATION &
MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC
7 MONMOUTH ROAD
SUITE 1
OAKHURST, N.J. 07755
TELEPHONE: (732) 222-4327
FACSIMILE: (732) 222-4758
E-MAIL: tomislavneuman@aol.com**

Dated: December 10, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December, 2004, copies of the forgoing Notice of Intent to File FEEDER RAILROAD DEVELOPMENT APPLICATION of the FORTY PLUS FOUNDATION & MANHATTAN CENTRAL RAILWAY SYSTEMS, LLC was served by first-class mail, postage prepaid, or (hand-delivery), upon all required parties of record.



Tomislav R. Neuman